

AMENDMENT NUMBER THREE
TO AN AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
KIMLEY-HORN AND ASSOCIATES, INC. (CONSULTANT)
FOR
ENGINEERING
DESIGN SERVICES AGREEMENT

Made as of the _____ day of _____ in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Consultant: **Kimley-Horn and Associates, Inc.**
801 Cherry Street, Unit 11, Suite 950
Fort Worth, Texas 76102
Telephone: (817) 335-6511
Facsimile: (817) 335-5070

for the following Project: **Professional transportation engineering services in connection with the design and bid package preparation for traffic signal installations at the intersections of Independence Parkway at Eldorado Parkway, Ohio Drive at Warren Parkway, and Ohio Drive at Gaylord Parkway**

The City and the Consultant agree as set forth below.

THIS AMENDMENT NUMBER THREE is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Kimley-Horn and Associates, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Amendment Number Three."

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services for the completion of a design revision requested by the City; referencing the Additional Services in relation to the Project Schedule (defined in the Agreement); revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services relating to design revision requested by City; revising the amount of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Record Documents for the project; revising the percentage of Consultant's Fee (defined in the Agreement) allocated toward the completion of the requirements associated with the Texas Architectural Barriers Act (the "Barriers Act") and ensuring the City's receipt of the Notice of Substantial Compliance for the Project, issued by the Texas Department of Licensing and Regulation (the "TDLR"); referencing the Additional Services for the Project in relation to the Consultant's submission of invoices to the City for work on the Project; and referencing the Additional Services for the Project in relation to the City's ownership of the Project Documents, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number One;" and

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services for the completion of a design revision requested by the City; referencing the Additional Services in relation to the Project Schedule (defined in the Agreement); revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services relating to design revision requested by City; revising the amount of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Record Documents for the project; revising the percentage of Consultant's Fee (defined in the Agreement) allocated toward the completion of the requirements associated with the Texas Architectural Barriers Act (the "Barriers Act") and ensuring the City's receipt of the Notice of Substantial Compliance for the Project, issued by the Texas Department of Licensing and Regulation (the "TDLR"); referencing the Additional Services for the Project in relation to the Consultant's submission of invoices to the City for work on the Project; and referencing the Additional Services for the Project in relation to the City's ownership of the Project Documents, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number Two;" and

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services for the completion of a design revision requested by the City; referencing the Additional Services in relation to the Project Schedule (defined in the Agreement); revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services relating to design revision requested by City; revising the amount of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Record Documents for the project; revising the percentage of Consultant's Fee (defined in the Agreement) allocated toward the completion of the

requirements associated with the Texas Architectural Barriers Act (the "Barriers Act") and ensuring the City's receipt of the Notice of Substantial Compliance for the Project, issued by the Texas Department of Licensing and Regulation (the "TDLR"); referencing the Additional Services for the Project in relation to the Consultant's submission of invoices to the City for work on the Project; and referencing the Additional Services for the Project in relation to the City's ownership of the Project Documents, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number Three;" and

WHEREAS, the City and Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services**. City and Consultant agree that this Amendment Number Three amends the Agreement for the purpose of, among other things, establishing additional Project services to be performed by Consultant, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:
 - a. Exhibit "L," Scope of Additional Services to Complete Design Revisions Requested by City, dated February 17, 2009.
 - b. Exhibit "M," Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated February 17, 2009.
2. **Amendment to Agreement, Article 1, Section 1.2, Scope of Services** – Article 1, Section 1.2 of the Agreement is hereby amended as follows:
 - "1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," Exhibit "H", Exhibit "J", **and Exhibit "L"**, which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," ~~Exhibit "H", Exhibit "J",~~ **and Exhibit "L"**, in the form of written change orders, may be authorized from time to time by the City."

3. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work** – Article 1, Section 1.3 of the Agreement is hereby amended as follows:

“1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit “B” **and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated February 17, 2009, attached hereto as Exhibit “M”** and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than ~~January 31, 2009~~ **March 31, 2009.**”

4. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services** – Article 3, Section 3.1 of the Agreement is hereby amended as follows:

“3.1 **Compensation for Consultant's Services** – As described in “Article 1, Consultant's Services,” compensation for this Project shall be on a Lump Sum and Hourly Basis, for an amount not to exceed ~~Thirty Eight Thousand and 00/100 Dollars (\$38,000.00), Sixty One Thousand and 00/100 Dollars (\$61,000.00) Sixty Eight Thousand and 00/100 Dollars (\$68,000.00) Seventy Three Thousand and 00/100 Dollars (\$73,000.00)~~ (“Consultant's Fee”) and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit “B,” ~~and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated March 18, 2008, as set forth in Exhibit “I” and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated January 6, 2009, as set forth in Exhibit “K”~~ **and the Compensation Schedule / Project Billing / Project Budget for Additional Service February 17, 2009, as set forth in Exhibit “M”.**”

5. **Amendment to Agreement, Article 3, Section 3.1.1, Completion of Record Documents** – Article 3, Section 3.1.1 of the Agreement is hereby amended as follows:

“3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or “As-Built” Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final ~~five percent (5%)~~ **four and**

~~seventy-five tenths percent (4.75%) four and twenty-six tenths percent (4.26%)~~ three and ninety-seven tenths percent (3.97%) of the Consultant's Fee, or Two Thousand Nine Hundred and 00/100 Dollars (\$2,900.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided ~~Design and Drafting~~ Drafting and Design ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement."

6. **Amendment to Agreement, Article 3, Section 3.1.4.6, TDLR Notice of Substantial Compliance**— Article 3, Section 3.1.4.6 of the Agreement is hereby amended as follows:

"3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final ~~five percent (5%) four and seventy-five tenths percent (4.75%) four and twenty-six tenths percent (4.26%)~~ three and ninety-seven tenths percent (3.97%) of the Consultant's Fee, or Two Thousand Nine Hundred and 00/100 Dollars (\$2,900.00) shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project."

7. **Amendment to Agreement, Article 3, Section 3.2, Direct Expenses** – Article 3, Section 3.2 of the Agreement is hereby amended as follows:

"3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B" and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated February 17, 2009, attached hereto as Exhibit "M" and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for

reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment."

8. **Amendment to Agreement, Article 3, Section 3.4, Invoices** – Article 3, Section 3.4 of the Agreement is hereby amended as follows:

"3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B", Exhibit "I", Exhibit "K", **and Exhibit "M"**. On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges."

9. **Amendment to Agreement, Article 4, Section 4.1, Documents Property of the City** – Article 4, Section 4.1 of the Agreement is hereby amended as follows:

"4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A", Exhibit "H", **and Exhibit "L"**. Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A", Exhibit "H", **and Exhibit "L"** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not

limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk."

10. **Complete Agreement.** This Amendment Number Three, including the exhibits attached hereto and labeled "L" through "M," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number Three may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "L-M" are attached hereto and made a part of the Agreement and this Amendment Number Three.
12. **Counterparts.** This Amendment Number Three may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number Three. A facsimile signature will also be deemed to constitute an original if properly executed.
13. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
14. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
15. **Authority to Execute.** The individuals executing this Amendment Number Three represent and warrant that they are empowered and duly authorized to so execute this Amendment Number Three on behalf of the parties they represent.
16. **Entire Agreement / Amendment Number Three.** This Amendment Number Three, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof.
17. **Venue.** The Agreement and Amendment Number Three shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

18. **Assignment**. This Amendment Number Three may not be assigned except as authorized in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment Number Three to the Agreement, and caused this Amendment Number Three to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

City of Frisco, Texas

By: _____

George Purefoy

Title: City Manager

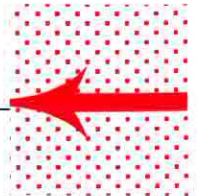
CONSULTANT

Kimley-Horn and Associates, Inc.

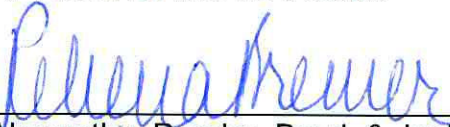
By:  _____

Glenn A. Gary, P.E.

Title: Senior Vice President



APPROVED AS TO FORM:

 _____

Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: _____

STATE OF TEXAS:

COUNTY OF Tarrant:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GLENN A. GARY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6 DAY OF February, 2009.

Ortencia Johnson

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: May 29, 2011



EXHIBIT "L"
SCOPE OF ADDITIONAL SERVICES
TO COMPLETE DESIGN REVISIONS REQUESTED BY CITY
DATED FEBRUARY 17, 2009

Amendment Number Three to Agreement
by and between the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
for Design and Bid Package Preparation for traffic signal installations at the
intersections of Independence Parkway at Eldorado Parkway, Ohio Drive at
Warren Parkway, and Ohio Drive at Gaylord Parkway

I. PROJECT DESCRIPTION

It is understood that the City of Frisco desires to separate the signal design plans for Legacy Drive at Town and Country Boulevard and prepare a standalone bid package for this intersection.

II. TASK SUMMARY, ADDITIONAL BASIC SERVICES

A. Task One, Preparation of Bid Package

- 1.1 Modify the existing traffic signal design sheets to be incorporated into a standalone plan set. Work under the subtask includes modification to TxDOT modified standards, creating a cover sheet, and updating page numbers.
- 1.2 Prepare notice to bidders and bid proposal sections to be included in the City prepared bid documents.
- 1.3 Submit up to fifteen (15) copies for the final plans (11" x 17"), one (1) copy of the notice to bidders, and one (1) copy of the bid proposal to the City of bidding.

III. DELIVERABLES

The Consultant will deliver the following materials to the City:

1. Up to fifteen (15) copies (11" x 17") of the final traffic signal plans
2. One (1) copy of the notice to bidders and bid proposal.

- End of Scope of Services -

EXHIBIT "M"
COMPENSATION SHCEDULE / PROJECT BILLING / PROJECT BUDGET FOR
ADDITIONAL SERVICES TO COMPLETE DESIGN ADDITIONS REQUESTED BY
CITY DATED FEBRUARY 17, 2009

Amendment Number Three to Agreement
by and between the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
for Design and Bid Package Preparation for traffic signal installations at the
intersections of Independence Parkway at Eldorado Parkway, Ohio Drive at
Warren Parkway, and Ohio Drive at Gaylord Parkway

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
February 17, 2009	--	City Council approval of Resolution authorizing the City Manager to execute Amendment Number Three to the Agreement; City issued Notice to Proceed to Consultant.
February 27, 2009	--	Consultant's receipt of fully executed Amendment.
February 28, 2009	\$ 4,500.00	Task One, Bid Package Preparation (Task Completed 90% and all task-related deliverables completed as stated in Exhibit "L" and accepted by the City).
March 31, 2009	\$ 500.00	Task One, Bid Package Preparation (Task Completed 100% and all task-related deliverables completed as stated in Exhibit "L" and accepted by the City).

PROJECT BUDGET SUMMARY

A. Basic Services

1. Description of Basic Services

a. Bid Package Preparation 90%	\$ 4,500.00
b. Bid Package Preparation 100%	\$ 500.00

2. **Total Basic Services (Lump Sum, Not-To-Exceed)** \$ 5,000.00

B. Special Services.

1. Description of Special Services.

a. **Traffic Signal Plan Design** \$ 0.00

b. **Completion of Record Documents** \$ 0.00

2. **Total Special Services (Hourly, Not-To-Exceed)** \$ 0.00

C. Direct Expenses.

1. Total Direct Expenses (included in fees above) \$ 0

D. Project Budget, Grand Total (Not-To-Exceed) \$ **5,000.00**